No. 94-688

In The

Supreme Court of the United States

October Term, 1994

NATIONAL PRIVATE TRUCK COUNCIL, INC., *et al.*,

Petitioners,

v.

OKLAHOMA TAX COMMISSION, *et al.*,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Oklahoma

BRIEF OF BOYERTOWN AREA SCHOOL DISTRICT, *ET AL.*, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

STEPHEN G. RHOADS
HOWARD J. BASHMAN*
MONTGOMERY, MCCRACKEN, WALKER & RHOADS
Three Parkway – 20th Floor
Philadelphia, PA 19102
(215) 665-7200

*Counsel of Record

Counsel for Amici Curiae Boyertown Area School District, et al.

RECEIVED
MAR 2 4 1995
OFFICE OF THE CLERK
SUPREME COURT, U.S.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF THE ARGUMENT 6

ARGUMENT 8

I. State Courts Are Not Required To Entertain 42 U.S.C. §1983 Tax Challenges If Plain, Adequate And Complete Remedies Are Available Under State Law 8

A. Introduction 8

B. Section 1983 tax challenges represent a special category of cases where resort to state remedies can be mandated 9

C. Petitioners' Supremacy Clause argument lacks merit 16

II. Because The Supreme Court Of Oklahoma Properly Refused To Entertain Petitioners' Claim Under 42 U.S.C. §1983, Petitioners Have No Right To Attorneys' Fees Pursuant To 42 U.S.C. §1988(b) 22

CONCLUSION 24

TABLE OF AUTHORITIES

Page

Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, 488 U.S. 336 (1989) 2

Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221 (1987) 22

Behe v. Chester County Bd. of Assessment Appeals, 952 F.2d 66 (CA3 1991) 3

Boughton Trucking & Materials, Inc. v. County of Will, 229 Ill. App. 3d 576, 593 N.E.2d 1119 (1992) 18

California v. Grace Brethren Church, 457 U.S. 393 (1982) 18, 19, 23

Chapman v. Houston Welfare Rights Org., 441 U.S. 600 (1979) 22

County of Berks v. Murtagh, 114 S. Ct. 1397 (1994) 5

Dennis v. Higgins, 498 U.S. 439 (1991) 21

Dows v. Chicago, 78 U.S. (11 Wall.) 108 (1871) 11

Ex parte Young, 209 U.S. 123 (1908) 11

Fair Assessment in Real Estate Ass'n, Inc. v. McNary, 454 U.S. 100 (1981) ..... *passim*

Felder v. Casey, 487 U.S. 131 (1988) 10

First Nat'l Bank of Greeley v. Board of County Comm'rs of Weld County, 264 U.S. 450 (1924) 14

Garrett v. Bamford, 582 F.2d 810 (CA3 1978) 3

Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943) 13

Greenwich Township v. Murtagh, 144 Pa. Commw. 624, 601 A.2d 1352 (1992) 2, 5

TABLE OF AUTHORITIES – Continued

Page

Howlett v. Rose, 496 U.S. 356 (1990) 10

Lynch v. Household Fin. Corp., 405 U.S. 538 (1972) 13

McNeese v. Board of Educ., 373 U.S. 668 (1963) 10

Miller v. Bauer, 517 F.2d 27 (CA7 1975)..... 19

Murtagh v. County of Berks, 535 Pa. 50, 634 A.2d 179 (1993), *cert. denied*, 114 S. Ct. 1397 (1994) 3-5

North Carolina Dep't of Transp. v. Crest St. Community Council, Inc., 479 U.S. 6 (1986).....23, 24

Patsy v. Board of Regents, 457 U.S. 496 (1982) 10

Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984) 21, 22

Perez v. Ledesma, 401 U.S. 82 (1971) 12

Raschke v. Blancher, 141 Ill. App. 3d 813, 491 N.E.2d 1171 (1986) 18

Rosewell v. LaSalle Nat'l Bank, 450 U.S. 503 (1981) 17-19, 23

Sipe v. Amerada Hess Corp., 689 F.2d 396 (CA3 1982) 19

Spencer v. South Carolina Tax Comm'n, 471 U.S. 82 (1985) (per curiam) 6

Spencer v. South Carolina Tax Comm'n, 281 S.C. 492, 316 S.E.2d 386, *cert. granted*, 469 U.S. 879 (1984) 5

Stufflebaum v. Panethiere, 691 S.W.2d 271 (Mo. 1985)..... 21

Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989) 10

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

U.S. Const. art. VI, cl. 2 16

STATUTES

28 U.S.C. §1341 ..... 12, 13

42 U.S.C. §1983 ..... *passim*

42 U.S.C. §1988(b) 4, 7, 8, 19, 22-24

COURT RULES

Sup. Ct. R. 37.3 1

No. 94-688

In The

Supreme Court of the United States

October Term, 1994

NATIONAL PRIVATE TRUCK COUNCIL, INC., *et al.*,

Petitioners,

v.

OKLAHOMA TAX COMMISSION, *et al.*,

Respondents.

On Writ Of Certiorari To The
Supreme Court Of Oklahoma

BRIEF OF BOYERTOWN AREA SCHOOL DISTRICT, *ET AL.*, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

This brief is filed pursuant to Rule 37.3 with the written consent of counsel of record for all parties. *Amici curiae* Boyertown Area School District, *et al.*, support respondents and respectfully request affirmance of the Supreme Court of Oklahoma's judgment.

INTEREST OF *AMICI CURIAE*

Amici curiae Boyertown Area School District, Daniel Boone Area School District, Exeter Township School

District, Fleetwood Area School District, Governor Mifflin School District, Hamburg Area School District, Kutztown Area School District, Muhlenberg School District, City of Reading School District, Schuylkill Valley School District, Twin Valley School District, Wilson School District and Wyomissing Area School District are school districts located in Berks County, Pennsylvania that have been named as defendants in a suit known as *Murtagh v. County of Berks*. That suit is currently pending in Pennsylvania's state court system.

Plaintiffs in *Murtagh* have asserted a single claim for relief seeking monetary damages pursuant to 42 U.S.C. §1983. Plaintiffs allege that defendants used real estate tax assessment practices that, in violation of state law, resulted in new purchasers of real property paying a disproportionately high share of real estate taxes compared to the share paid by long-time owners of similar properties. Relying on this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, 488 U.S. 336 (1989), plaintiffs in *Murtagh* contend that the real estate tax assessment practices about which they complain deprived them of their right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

In 1992, the Commonwealth Court of Pennsylvania held that plaintiffs' 42 U.S.C. §1983 suit had to be dismissed because plain, adequate and complete administrative and judicial remedies existed under Pennsylvania law that permitted plaintiffs to raise their federal constitutional challenge to Berks County's system of property tax assessment. *See Greenwich Township v. Murtagh*, 144 Pa. Commw. 624, 632-37, 601 A.2d 1352, 1356-59 (1992).

The Commonwealth Court ruled:

> "We join the consensus of other state courts that a Section 1983 challenge to state tax administration is not maintainable if state remedies afford the taxpayer an opportunity for full and adequate relief. Both Congress, by enacting the Anti-Tax Injunction Act, and the Supreme Court, by its holding in *Fair Assessment* [*in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100 (1981)], prohibiting or declining to exercise jurisdiction, have decided that federal interests are not advanced by allowing federal causes of action to intrude upon a carefully formulated state system designed to rectify state tax disputes. Since federal courts decline to exercise jurisdiction because federal intrusion in state tax schemes is unwarranted, state courts should also not interfere, because [their] enforcement of Section 1983 is no less intrusive or disruptive than if enforced by a federal court."

Id. at 632, 601 A.2d at 1356.

The Commonwealth Court in *Murtagh* also held, in accord with the ruling of the United States Court of Appeals for the Third Circuit, that Pennsylvania's state law administrative and judicial remedies for determining whether a tax runs afoul of federal law are plain, adequate and complete. *See id.* at 633-37, 601 A.2d at 1357-59; *see also Behe v. Chester County Bd. of Assessment Appeals*, 952 F.2d 66, 68 (CA3 1991); *Garrett v. Bamford*, 582 F.2d 810, 817 (CA3 1978).

On further appeal, the Supreme Court of Pennsylvania reversed. *See Murtagh v. County of Berks*, 535 Pa. 50, 634 A.2d 179 (1993), *cert. denied*, 114 S. Ct. 1397 (1994). Pennsylvania's highest court held that the Supremacy Clause of the United States Constitution requires a state

court to entertain a tax challenge brought pursuant to 42 U.S.C. §1983 regardless of whether administrative and judicial remedies available under state law would, if pursued, provide plain, adequate and complete relief. *See Murtagh*, 535 Pa. at 60-63, 634 A.2d at 184-85.

Accordingly, Pennsylvania taxpayers who wish to claim that state or local taxes are imposed in violation of federal law no longer are required to present their claims to the administrative and judicial tribunals that Pennsylvania's lawmakers have created to adjudicate such claims. These taxpayers are now able to proceed directly to state court to pursue 42 U.S.C. §1983 tax challenges without having to resort instead to the administrative and judicial remedies available under state law.

As a result of the Supreme Court of Pennsylvania's ruling in *Murtagh*, the Pennsylvania school districts who join in this brief are being denied the chance to cure, through existing state law remedies, the defects alleged in the *Murtagh* suit before being subjected to liability under 42 U.S.C. §1983.

These school districts are also now subject to being held liable for their adversaries' attorneys' fees should their adversaries prevail. *See* 42 U.S.C. §1988(b). This result is to the detriment of innocent Berks County, Pennsylvania taxpayers generally, who ultimately will bear the cost of such fees. More importantly, this result is also to the serious detriment of schoolchildren in Berks County, Pennsylvania, and in those many other Pennsylvania counties where copycat 42 U.S.C. §1983 tax challenges have arisen in the aftermath of the Pennsylvania Supreme Court's ruling in *Murtagh*, whose educational needs are

difficult enough to meet under the financial constraints that many school districts in Pennsylvania currently face. The educational needs of these children and of schoolchildren throughout the nation will become even more difficult to meet should this Court reverse the judgment of the Supreme Court of Oklahoma and require state courts to entertain 42 U.S.C. §1983 tax challenges without regard to the adequacy of existing state law remedies.

The ruling of the Supreme Court of Oklahoma below is in accord with the Commonwealth Court of Pennsylvania's ruling in *Greenwich Township v. Murtagh*, 144 Pa. Commw. 624, 601 A.2d 1352 (1992). And, as petitioners explained in their Petition for a Writ of Certiorari, *see* Pet. for Cert. 12-13, the Supreme Court of Pennsylvania's ruling in *Murtagh v. County of Berks*, 535 Pa. 50, 634 A.2d 179 (1993), which reversed the Commonwealth Court's dismissal of the *Murtagh* suit, conflicts directly with the Supreme Court of Oklahoma's ruling below.

Amici curiae Boyertown Area School District, *et al.*, having unsuccessfully sought last year to obtain this Court's review of the Supreme Court of Pennsylvania's ruling in *Murtagh*, *see County of Berks v. Murtagh*, 114 S. Ct. 1397 (1994) (denying certiorari), are pleased that this Court has agreed to decide the important question presented herein for review.[1] For the reasons that follow,

---

[1] In 1984, this Court granted a petition for a writ of certiorari seeking review of a decision of the Supreme Court of South Carolina that is strikingly similar to the decision of the Supreme Court of Oklahoma now before this Court for review. *See Spencer v. South Carolina Tax Comm'n*, 281 S.C. 492, 316 S.E.2d 386, *cert. granted*, 469 U.S. 879 (1984). The questions presented in

amici curiae Boyertown Area School District, *et al.*, respectfully request the affirmance of the judgment of the Supreme Court of Oklahoma.

SUMMARY OF THE ARGUMENT

The Supreme Court of Oklahoma correctly decided that federal law does not require a state court to entertain a 42 U.S.C. §1983 tax challenge where remedies exist under state law that are adequate to vindicate a taxpayer's claim that a state or local tax violates federal law.

Petitioners filed suit in Oklahoma state court seeking injunctive and declaratory relief barring further enforcement of a tax alleged to run afoul of the Commerce Clause of the United States Constitution. Petitioners also sought a refund of taxes already paid under the allegedly unconstitutional law.

The Oklahoma state courts refused to entertain petitioners' 42 U.S.C. §1983 claim because petitioners were able to obtain the relief they sought in state court by pursuing the remedies readily available under Oklahoma law. By exercising available state law remedies, petitioners obtained a declaration that the challenged tax violated the Commerce Clause, an injunction prohibiting

---

Spencer were almost identical to the question presented herein. Only eight Justices were available to participate in considering *Spencer*, and this Court was evenly split over whether to affirm, resulting in the non-precedential affirmance of the Supreme Court of South Carolina's judgment. *See Spencer v. South Carolina Tax Comm'n*, 471 U.S. 82 (1985) (per curiam) (Powell, J., not participating).

further enforcement of the tax and an order granting petitioners a refund of taxes paid in violation of federal law.

Having obtained vindication of their federal rights using the remedies that Oklahoma law provides, petitioners now argue that state courts have a duty to entertain tax challenges brought pursuant to 42 U.S.C. §1983 regardless of the adequacy of existing state law remedies. In its current posture, this case is simply a dispute over whether respondents should be held liable for petitioners' attorneys' fees under 42 U.S.C. §1988(b).

While this Court has ruled that the existence of adequate state law remedies is not generally a valid reason for a state court to refuse to hear a suit brought pursuant to 42 U.S.C. §1983, this Court has recognized an exception in the domain of state taxation, holding that the general rule of ready access to courts in 42 U.S.C. §1983 actions yields to the unique and significant state and local concerns implicated by challenges to a state or political subdivision's methods of raising revenue.

Where a §1983 damages action is brought in federal court challenging the constitutionality of a state or political subdivision's system of taxation, the federal court will dismiss the action if the court is satisfied that a plain, adequate and complete remedy exists under state law. *See Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100 (1981). For a state law remedy to be plain, adequate and complete, it merely must offer a plaintiff whose §1983 tax claim is barred from federal court the opportunity to have her federal claims heard administratively, with the right of appeal to the State's judicial

system and then to this Court. Where, as in Oklahoma and Pennsylvania, state law remedies are plain, adequate and complete, the unavailability of a 42 U.S.C. §1983 tax challenge does not undermine, or even threaten to undermine, the supremacy of federal law.

State courts do not violate the Supremacy Clause when they administer 42 U.S.C. §1983 in the same manner as federal courts. Because the existence of adequate state law remedies is sufficient to bar a 42 U.S.C. §1983 tax challenge in federal court, the existence of adequate state law remedies is also a sufficient reason why a state court may decide to refuse to entertain a 42 U.S.C. §1983 tax challenge filed in state court.

Given the undisputed existence of adequate state law remedies, the Supremacy Clause did not require Oklahoma's state courts to entertain petitioners' 42 U.S.C. §1983 tax challenge. Consequently, petitioners have no valid claim for attorneys' fees pursuant to 42 U.S.C. §1988(b) as petitioners have not prevailed in an action to enforce one of the civil rights laws listed in §1988(b). The judgment of the Supreme Court of Oklahoma should therefore be affirmed.

ARGUMENT

I. State Courts Are Not Required To Entertain 42 U.S.C. §1983 Tax Challenges If Plain, Adequate And Complete Remedies Are Available Under State Law

A. Introduction

This case arises at the crossroads where two significant federal policies collide. On the one hand is the

significant federal policy that plaintiffs who have been deprived of their federal constitutional rights under color of state law should generally have immediate and unrestricted access to federal and state courts to pursue actions under 42 U.S.C. §1983. On the other hand is the significant federal policy that courts should refrain from interfering with traditional state and local procedures for addressing challenges to the administration of taxation at the state and local levels.

This Court has ruled that 42 U.S.C. §1983 damages actions brought in federal court to challenge state or local taxation must yield to state remedies where those remedies are plain, adequate and complete. A vast number of state courts are in agreement, holding that a taxpayer cannot bring a state court §1983 action to challenge state or local taxation where the taxpayer seeks to circumvent existing state remedies that are plain, adequate and complete.

Understood in this context, it is clear that the Supreme Court of Oklahoma's ruling was faithful to federal law and in furtherance of this Court's directive that §1983 claims brought in state courts must be treated the same as §1983 claims brought in federal courts.

B. Section 1983 tax challenges represent a special category of cases where resort to state remedies can be mandated

The school districts joining in this brief recognize that this Court has held that a state judicial system generally may not place any outcome-determinative obstacle in the way of a §1983 claim that would not be encountered if

the §1983 claim were being asserted in federal court. *See Felder v. Casey*, 487 U.S. 131, 138 (1988). This Court has also held that the existence of adequate, alternate state law remedies is not generally a reason to bar a §1983 action from being brought in either federal or state court. *See Patsy v. Board of Regents*, 457 U.S. 496, 500-01 (1982); *McNeese v. Board of Educ.*, 373 U.S. 668, 671-72 (1963).

A recurring theme found in this Court's §1983 jurisprudence is that a §1983 claim should produce the same result whether brought in state or federal court. *See Howlett v. Rose*, 496 U.S. 356, 375-76 (1990); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989); *Felder*, 487 U.S. at 138.

This Court ruled in *Howlett* and *Felder* that it would be anomalous for a §1983 claim to be barred in state court while the claim would be permitted to proceed in federal court. Thus, this Court held in *Howlett* and *Felder* that the state courts erred in barring the claims.

Likewise, in *Will* this Court noted that it would be anomalous for a §1983 claim to fail in federal court and yet be allowed to proceed in state court. Thus, in *Will* this Court held that States, which cannot be sued under §1983 in federal court because of the Eleventh Amendment, cannot be sued under §1983 in state court because they are not "persons" as that term is used in the statute.

The principle that must be taken from *Howlett*, *Will* and *Felder* is that state courts must treat §1983 claims generally the same as federal courts, no better and no worse. It is therefore necessary to examine how federal courts resolve §1983 claims challenging state and local taxation.

The answer to that enquiry is found in *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100 (1981). In *McNary*, this Court was asked to decide whether a federal district court had to entertain a §1983 damages action challenging the allegedly unconstitutional administration of St. Louis County, Missouri's real property tax assessment procedures. The taxpayers in *McNary* claimed that the challenged tax scheme deprived them of equal protection and due process of law. *See* 454 U.S. at 106.

This Court began its opinion in *McNary* by quoting from the unanimous opinion of Justice Field in *Dows v. Chicago*, 78 U.S. (11 Wall.) 108, 110 (1871). *See McNary*, 454 U.S. at 102. In *Dows*, a case decided only months before Congress enacted the statute now codified at 42 U.S.C. §1983, Justice Field wrote:

> "It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting taxes, may derange the operations of government, and thereby cause serious detriment to the public."

Dows, 78 U.S. (11 Wall.) at 110.

The Court's sentiments in *Dows* proved prescient. For example, after Congress enacted §1983 and this Court held that federal courts could enter injunctions prohibiting state officers from enforcing unconstitutional state laws, *see Ex parte Young*, 209 U.S. 123 (1908), Congress took action in 1937 to protect the integrity of state and

local tax systems from the devastating effects of such injunctions by enacting the Tax Injunction Act, 28 U.S.C. §1341. The Act provides:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

28 U.S.C. §1341. Thus, while federal courts could enjoin state officers from enforcing most unconstitutional state laws, Congress prohibited federal courts from enjoining state officers from enforcing unconstitutional state tax laws where state law offered a plain, speedy and efficient remedy.

This Court has continued to recognize the unique state and local concerns implicated in federal challenges to state and local taxation in more recent times. In 1971, those concerns were eloquently voiced by Justice Brennan. In his separate opinion in *Perez v. Ledesma*, 401 U.S. 82, 128 n.17 (1971) (Brennan, J., concurring in part and dissenting in part), Justice Brennan wrote:

> "The special reasons justifying the policy of federal non-interference with state tax collection are obvious. The procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayers' disputes with tax officials are generally complex and necessarily designed to operate according to established rules. State tax agencies are organized to discharge their responsibilities in accordance with the state procedures. If federal declaratory relief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state

> law. During the pendency of the federal suit the collection of revenue under the challenged law might be obstructed, with consequent damage to the State's budget, and perhaps a shift to the State of the risk of taxpayer insolvency. Moreover, federal constitutional issues are likely to turn on questions of state tax law, which, like issues of state regulatory law, are more properly heard in the state courts."

One year later, this Court returned to the issue in *Lynch v. Household Fin. Corp.*, 405 U.S. 538 (1972). There, in distinguishing several cases cited for the proposition that federal courts only had jurisdiction over §1983 cases that implicated "personal" rights, rather than "property" rights, the Court wrote:

> "All of these cases involved constitutional challenges to the collection of state taxes. *Congress has treated judicial interference with the enforcement of state tax laws as a subject governed by unique considerations . . . .* "

405 U.S. at 542 n.6 (emphasis added).

The tension between §1983 and Congress's long-standing policy against federal interference with the enforcement of state and local tax laws came to a head in *McNary*. When *McNary* came before this Court in 1981, it had long been clear that federal courts would not enjoin state tax laws, or even declare them unconstitutional, if a "plain, speedy and efficient" remedy was available under state law. *See Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299 (1943); 28 U.S.C. §1341. However, until *McNary* the Court had never examined whether federal courts could hear §1983 actions seeking damages on account of allegedly unconstitutional state or local taxes.

In *McNary*, the Court held that a §1983 suit seeking damages for the allegedly unconstitutional administration of St. Louis County's real property tax assessment system could not be brought in federal court. The Court wrote:

> "despite the ready access to federal courts provided by *Monroe*[*v. Pape*, 365 U.S. 167 (1961),] and its progeny, we hold that taxpayers are barred by the principle of comity from asserting §1983 actions against the validity of state tax systems in federal courts. *Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete,* and may ultimately seek review of the state decisions in this Court."

McNary, 454 U.S. at 116 (emphasis added; footnote omitted).[2] The Court in *McNary* thus concluded that deference should be given to state tax procedures free from the federal intrusion that a damages claim under 42 U.S.C. §1983 was likely to cause. *See also First Nat'l Bank of Greeley v. Board of County Comm'rs of Weld County*, 264 U.S. 450 (1924) (suit alleging that tax was collected in violation of due process and equal protection clauses of Fourteenth Amendment held barred by taxpayer's failure to exhaust available state remedies).

---

[2] In the omitted footnote, the Court wrote that it "discern[ed] no significant difference, for purposes of the principles recognized in this case, between remedies which are 'plain, adequate, and complete,' as that phrase has been used in articulating the doctrine of equitable restraint, and those which are 'plain, speedy and efficient,' within the meaning" of the Tax Injunction Act. *McNary*, 454 U.S. at 116 n.8.

The Court made clear that its primary purpose in *McNary* was to avoid interfering with state tax administration. The Court thus preserved the ability of States to apply their procedures and remedies in tax matters. As the Court explained:

> "the intrusiveness of such §1983 actions would be exacerbated by the nonexhaustion doctrine of *Monroe v. Pape*, 365 U.S. 167 (1961). Taxpayers such as petitioners would be able to invoke federal judgments without first permitting the State to rectify any alleged impropriety."

McNary, 454 U.S. at 113-14.

It certainly is no less disruptive of a state or local government's internal economy and administrative and adjudicative procedures for a state court to entertain a §1983 tax challenge than it would be for a federal court to do so. Regardless of which judicial system interferes with the state or local government's fiscal operations, the affected state, county, municipal and/or school district tax officials would be improperly denied the chance to cure any alleged defects before being subjected to a §1983 action. Thus, the concerns that provided the basis for this Court's decision in *McNary* are equally applicable to 42 U.S.C. §1983 tax challenges brought in state court.

This Court has held that §1983 challenges to a state or political subdivision's scheme of tax administration represent a special category of cases where a court can decline to entertain a 42 U.S.C. §1983 suit in favor of existing, adequate state law remedies. The Supreme Court of Oklahoma thus did not violate federal law when it declined to entertain petitioners' 42 U.S.C. §1983 tax

challenge for the very reasons approved by this Court in *McNary*.

C. Petitioners' Supremacy Clause argument lacks merit

Petitioners argue at length that the Supreme Court of Oklahoma's decision violates the Supremacy Clause, which provides that federal law "shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2.

To the contrary, the Oklahoma Supreme Court's decision does not conflict with the Supremacy Clause, because that court's ruling gives effect to Congress's longstanding policy of deference toward the traditional state and local procedures for resolving challenges to state and local taxation.

At bottom, petitioners assert that the Supremacy Clause requires state courts to entertain §1983 actions against state and local taxing authorities without regard to the adequacy of existing state law remedies. If petitioners are correct, we are at a loss to understand why this Court ever undertook to determine whether a state's existing remedies qualified as "plain, speedy and efficient" or "plain, adequate and complete" in deciding whether to entertain a 42 U.S.C. §1983 tax challenge filed in federal court, because a plaintiff who sought to bring such a suit in federal court, but was thwarted by the Tax Injunction Act or this Court's ruling in *McNary*, would always be free instead to refile her §1983 suit in state court.

Petitioners' argument is indeed inconsistent with the manner in which this Court has disposed of 42 U.S.C. §1983 tax challenges improperly brought in federal court. In *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 510 (1981), for example, the Court confronted a §1983 action in which plaintiff claimed that the property tax assessment policy of Cook County, Illinois required her to pay three and one-half times the lawful amount of tax, in violation of her federal rights to equal protection and due process. The district court dismissed her suit, finding it barred under the Tax Injunction Act. The United States Court of Appeals for the Seventh Circuit reversed, holding that Illinois law did not provide plaintiff with a plain, speedy and efficient remedy.

This Court disagreed and ruled that Illinois law did provide plaintiff with a plain, speedy and efficient remedy, even though the state law remedy was less attractive than the remedy presumed available under 42 U.S.C. §1983. *See* 450 U.S. at 505, 515, 523-25. The state law remedy at issue in *Rosewell* did not guarantee plaintiff interest on her alleged overpayments, while the Court assumed without deciding that plaintiff would be entitled to such interest under §1983. *See* 450 U.S. at 505, 515, 523-25.

This Court held in *Rosewell* that for a state remedy to qualify as plain, speedy and efficient the remedy merely must meet "certain minimal *procedural* criteria." *Id.* at 512. The Court also explained that a state remedy is plain, speedy and efficient if it "provides the taxpayer with a full hearing and judicial determination at which she may raise any and all constitutional objections to the tax"

followed by the opportunity to seek review in this Court. *Id.* at 514 (internal quotations omitted).[3]

Similarly, in *California v. Grace Brethren Church*, 457 U.S. 393, 414 (1982), this Court held California's remedy to be plain, speedy and efficient where the taxpayer had available to it administrative remedies, followed by judicial remedies where the taxpayer could raise "all arguments against the validity of the tax." Then, the taxpayer could "ultimately seek review in this Court." *Id.*

In *Grace Brethren Church*, this Court also noted that in 1937, when Congress enacted the Tax Injunction Act, Congress was well aware that refund procedures were in many states the *sole remedy* to recover unlawfully collected taxes. *See id.* at 416. It thus seems clear that Congress, when it enacted the Tax Injunction Act, did not intend by its action to require state courts to alter their existing procedures by forcing state courts to entertain injunctive challenges to state or local taxation brought pursuant to 42 U.S.C. §1983. *E.g., Grace Brethren Church*, 457 U.S. at 416-17 (declining to create exception to Tax Injunction Act for the benefit of taxpayers raising First

---

[3] In *Rosewell*, the Court noted that the Seventh Circuit below had concluded that Illinois state courts would entertain 42 U.S.C. §1983 tax challenges, but this Court wrote that it did "not reach this issue." 450 U.S. at 511 n.14. More recently, however, Illinois state courts have ruled that they will not hear §1983 tax challenges where plaintiffs have failed to exhaust the administrative remedies available under state law. *See Boughton Trucking & Materials, Inc. v. County of Will*, 229 Ill. App. 3d 576, 593 N.E.2d 1119 (1992); *Raschke v. Blancher*, 141 Ill. App. 3d 813, 491 N.E.2d 1171 (1986).

Amendment claims where remedy available to taxpayers under state law was limited to a refund action).

To accept petitioners' argument is to conclude that *Rosewell* and *Grace Brethren Church* were wrongly decided. If state courts were required under the Supremacy Clause to entertain independent §1983 actions even where plain, adequate and complete state law remedies exist, one wonders why this Court determined in those two cases, and why lower federal courts ever since have continued to determine, whether existing state remedies were sufficient to compensate for the unavailability of a federal cause of action under §1983.[4]

The evil of federal interference in matters involving state and local taxation, which both Congress and this Court have abhorred and forbidden, *see Grace Brethren Church*, 457 U.S. at 419 (the Court notes "Congress' intent and our longstanding policy 'to limit drastically' federal interference in the administration of state taxes when a

---

[4] While petitioners make much of the fact that reinstatement of their §1983 claim may permit them to recover attorneys' fees under 42 U.S.C. §1988(b), it is understood that for a state remedy to be plain, adequate and complete it "need not be coextensive with that available in the federal courts . . . . " *Sipe v. Amerada Hess Corp.*, 689 F.2d 396, 407 (CA3 1982); *see also Miller v. Bauer*, 517 F.2d 27, 32 (CA7 1975) (remedy under state law need not be best remedy available or even equal to remedy available in federal court). If petitioners cannot recover their attorneys' fees here, they are no worse off than the plaintiff in *Rosewell* who, upon being remitted to state court to pursue her state law remedies, presumably lost the right to recover both her attorneys' fees *and* interest on any overpayments she may have made as the result of the unconstitutional overassessments about which she complained.

'plain, speedy and efficient' state remedy is available"), is not dispelled simply because the interference results from a §1983 action brought in state court. Where a state court concludes that it has been commanded by Congress and the Supremacy Clause to disregard state tax assessment remedies in favor of a federal remedy shaped by the federal courts, the interference remains federal in nature. To suppose that the intrusion would be any less would be to presume that state courts will refuse to provide the same relief normally available to §1983 litigants in federal court. The end result of a 42 U.S.C. §1983 tax challenge in state court is no less offensive to principles of comity and federalism than were the federal court damages actions that this Court barred in *McNary*.

This Court's statement in *McNary* that those who try to challenge state or local taxation by filing a 42 U.S.C. §1983 action in federal court instead "must seek protection of their federal rights by *state remedies*, provided of course that those remedies are plain, adequate and complete," 454 U.S. at 116 (emphasis added), is difficult to understand as meaning that state courts must entertain 42 U.S.C. §1983 tax challenges. Indeed, the result that petitioners seek here would undermine a crucial premise of this Court's holding in *McNary* – that a 42 U.S.C. §1983 tax challenge can be maintained in federal court where state remedies are *not* plain, adequate and complete. If state courts must entertain 42 U.S.C. §1983 tax challenges, the remedy available in state court would inevitably qualify as plain, adequate and complete.[5]

---

[5] It is true that this Court in *McNary*, in the course of discussing the remedies available in the courts of Missouri,

In sum, it is fully consistent with the Supremacy Clause for a state court to refuse adjudication of a §1983 challenge to state or local taxation where existing state law remedies are plain, adequate and complete. This Court should reject petitioners' suggestion to the contrary.[6]

---

referred to the fact that Missouri state courts generally entertained 42 U.S.C. §1983 actions, citing two Missouri Supreme Court opinions issued in §1983 actions, neither of which involved challenges to state or local taxation. *See McNary*, 454 U.S. at 116-17. There was no indication in *McNary*, however, that this Court believed the Supremacy Clause compelled state courts to hear 42 U.S.C. §1983 tax challenges regardless of the adequacy of state law remedies. Less than four years later, this Court's prediction in *McNary* of the Missouri state courts' willingness to entertain 42 U.S.C. §1983 tax challenges proved wrong. *See Stufflebaum v. Panethiere*, 691 S.W.2d 271 (Mo. 1985) (holding that because a plain, adequate and complete remedy existed under state law which taxpayers could use to challenge the federal constitutionality of real estate taxation, Missouri state courts need not entertain a 42 U.S.C. §1983 suit challenging that taxation). Nevertheless, nowhere in the aftermath of *Stufflebaum* does it appear to have been understood that the inability of a taxpayer to bring a 42 U.S.C. §1983 tax challenge in state court has rendered Missouri's state law remedies less than plain, adequate and complete.

[6] Petitioners' reliance upon this Court's decision in *Dennis v. Higgins*, 498 U.S. 439 (1991), as foreshadowing the outcome of this case is misplaced, because *Dennis* sheds absolutely no light on the question now before this Court. In *Dennis*, the Court merely decided that 42 U.S.C. §1983 provides a cause of action for violations of the Commerce Clause. The Court did not decide whether state courts could require that existing adequate state law remedies be pursued instead of entertaining tax challenges brought pursuant to §1983.

Petitioners also quote a sentence from *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 122 (1984), where this Court

II. Because The Supreme Court Of Oklahoma Properly Refused To Entertain Petitioners' Claim Under 42 U.S.C. §1983, Petitioners Have No Right To Attorneys' Fees Pursuant To 42 U.S.C. §1988(b)

Petitioners argue that the Supreme Court of Oklahoma's refusal to entertain their 42 U.S.C. §1983 claim constituted the denial of a right under federal law that Congress intended to make available to petitioners. Petitioners' argument that 42 U.S.C. §1983 confers rights is contrary to this Court's ruling in *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600 (1979).

In *Chapman*, this Court held that 42 U.S.C. §1983 does not confer substantive rights but merely provides a remedy to facilitate the enforcement of federal rights found in other provisions of federal law that do confer substantive rights. *See* 441 U.S. at 617-18. Thus, by denying petitioners the ability to bring their 42 U.S.C. §1983 claim in state court, the Supreme Court of Oklahoma has not deprived petitioners of any federal right. Instead, the Oklahoma Supreme Court has, at most, only deprived

---

wrote in dicta that "[c]hallenges to the validity of state tax systems under 42 U.S.C. §1983 also must be brought in state court." *Pennhurst*, an Eleventh Amendment decision, involved whether a federal court could order state officials to conform their conduct to state law. *Pennhurst* did not purport to decide whether state courts must entertain §1983 challenges against state or local taxing authorities where plain, adequate and complete state law remedies exist. Petitioners' reliance on the dicta in *Pennhurst* as having decided the question now before the Court is further undermined by this Court's later statement in *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 234 n.7 (1987), that "[w]hether state courts must assume jurisdiction over [42 U.S.C. §1983 tax challenges] is not entirely clear."

petitioners of a federal remedy in accord with this Court's decisions holding that a federal remedy under 42 U.S.C. §1983 must give way to the important state and local interests implicated in the realm of taxation.

Despite petitioners' repeated suggestions to the contrary, based upon their inaccurate portrayal of 42 U.S.C. §1983 as a "right" rather than a "remedy," the Oklahoma state courts have permitted petitioners to achieve vindication of their rights under federal law and, more specifically, under the Commerce Clause. What the Supreme Court of Oklahoma has not permitted petitioners to do is employ a federal remedy, 42 U.S.C. §1983, as the means for vindicating those federal rights. Instead, petitioners have vindicated their federal rights by using state law remedies, just as this Court envisioned in *McNary*, *Rosewell* and *Grace Brethren Church*.

Petitioners conclude their opening brief on the merits by arguing that the Supreme Court of Oklahoma's ruling negates the basic purpose of 42 U.S.C. §1988(b), which petitioners claim is to make attorneys' fees available to "all persons who are required to resort to legal action to vindicate their federal rights . . . . " Brief of Petitioners 32.

In making that argument, petitioners overlook this Court's ruling in *North Carolina Dep't of Transp. v. Crest St. Community Council, Inc.*, 479 U.S. 6 (1986). There, this Court ruled that "[u]nder the plain language and legislative history of §1988, however, only a court in an action to enforce one of the civil rights laws listed in §1988 may award attorney's fees." *Id.* at 15.

Petitioners would be entitled to recover their attorneys' fees pursuant to 42 U.S.C. §1988(b) only if the

Supreme Court of Oklahoma erred in dismissing petitioners' claim for relief under 42 U.S.C. §1983. Because, for reasons already explained, the Supreme Court of Oklahoma did not err in dismissing petitioners' claim for relief under 42 U.S.C. §1983, petitioners have no entitlement to recover their attorneys' fees pursuant to 42 U.S.C. §1988(b). *See Crest St. Community Council*, 479 U.S. at 15.

CONCLUSION

The judgment of the Supreme Court of Oklahoma should be affirmed.

Respectfully submitted,

STEPHEN G. RHOADS
HOWARD J. BASHMAN*
MONTGOMERY, MCCRACKEN,
WALKER & RHOADS
Three Parkway - 20th Floor
Philadelphia, PA 19102
(215) 665-7200

*Counsel of Record

Counsel for Amici Curiae
Boyertown Area School
District, et al.